

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Saavedra	Team: Squad #1	CCRB Case #: 202003817	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/31/2020 3:23 PM, Sunday, 05/31/2020 3:34 PM, Sunday, 05/31/2020 4:08 PM, Sunday, 05/31/2020 4:11 PM	Location of Incident: Various locations in Manhattan.	Precinct: 06	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/03/2020 11:07 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/03/2020 11:07 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Eckerle	07832	965708	108 PCT
2. POM Joseph Guarini	10825	966086	108 PCT
3. POM Ryan Bradley	21078	951555	PBMS
4. POM Jonathan Pena	20440	968061	007 PCT
5. POM Thomas Foronjy	00108	963522	007 PCT
6. POM Stephen Patti	10817	957939	007 PCT
7. POM Philip Salomone	08811	965497	109 PCT
8. POM Anthony Misiano	04394	964658	109 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. INS Brian McGinn	00000	910284	PBMS
2. POM Stephen Oleary	06298	952066	PBMS

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Eckerle	Abuse: Police Officer Michael Eckerle obstructed his shield number.	
B.POM Joseph Guarini	Abuse: Police Officer Joseph Guarini obstructed his shield number.	
C.POM Ryan Bradley	Abuse: Police Officer Ryan Bradley refused to provide his shield number to § 87(2)(b)	
D.POM Ryan Bradley	Abuse: Police Officer Ryan Bradley obstructed his shield number.	
E.POM Ryan Bradley	Force: Police Officer Ryan Bradley used physical force against § 87(2)(b)	
F.POM Jonathan Pena	Abuse: Police Officer Jonathan Pena obstructed his shield number.	
G.POM Thomas Foronjy	Abuse: Police Officer Thomas Foronjy obstructed his shield number.	
H.POM Stephen Patti	Abuse: Police Officer Stephen Patti obstructed his shield number.	

Officer(s)	Allegation	Investigator Recommendation
I.POM Anthony Misiano	Abuse: Police Officer Anthony Misiano obstructed his shield number.	
J.POM Anthony Misiano	Abuse: Police Officer Anthony Misiano refused to provide his shield number to § 87(2)(b)	
K.POM Philip Salomone	Abuse: Police Officer Philip Salomone obstructed his shield number.	
L.POM Joseph Guarini	Abuse: Police Officer Joseph Guarini obstructed his shield number.	

Case Summary

On June 3, 2020, § 87(2)(b) filed this complaint with the CCRB via its online website.

On May 31, 2020 beginning at approximately 3:23pm, § 87(2)(b) took part in a Black Lives Matter protest which marched through various locations in Manhattan. At various points in this trajectory, § 87(2)(b) approached officers while filming on his cell phone and asked for some combination of their name and/or shield number. At the intersection of 14th Street and 6th Avenue, § 87(2)(b) approached Police Officer Michael Eckerle of the 108th Precinct, who wore a mourning band fully obscuring his shield number (**Allegation A: Abuse of Authority - § 87(2)(g)**). At the same location, § 87(2)(b) approached Police Officer Joseph Guarini of the 108th Precinct, who also wore a mourning band which fully obscured his shield number (**Allegation B: Abuse of Authority - § 87(2)(g)**). At approximately 3:38pm, at the north side of Washington Square Park, § 87(2)(b) approached Police Officer Ryan Bradley of the Patrol Borough Manhattan South Scooter Task Force, who also wore a mourning band which fully obscured his shield number, and asked for his shield number (**Allegations C and D: Abuse of Authority - § 87(2)(g)**). PO Bradley then pushed § 87(2)(b) in the process of mounting his scooter (**Allegation E: Force - § 87(2)(g)**). At approximately 4:08pm, outside 46 Ridge Street, behind the 7th Precinct stationhouse building, § 87(2)(b) approached Police Officer Jonathan Pena and Police Officer Thomas Foronjy, both from the 7th Precinct, who both wore mourning bands completely obscuring their shield numbers (**Allegation F: Abuse of Authority - § 87(2)(g)**). **Allegation G: Abuse of Authority - § 87(2)(g)**. At the same location, § 87(2)(b) approached Police Officer Stephen Patti also assigned to the 7th Precinct, who also wore a mourning band completely obscuring his shield number (**Allegation H: Abuse of Authority - § 87(2)(g)**). At approximately 4:11pm, near the intersection of Clinton Street and the Williamsburg Bridge, § 87(2)(b) approached Police Officer Anthony Misiano and Police Officer Philip Salomone, both assigned to the 109th Precinct and both of whom wore mourning bands completely obscuring their shield numbers. He asked PO Misiano for his shield number (**Allegations I and J: Abuse of Authority - § 87(2)(g)**). § 87(2)(b) asked PO Salomone to uncover his badge (**Allegation K: Abuse of Authority - § 87(2)(g)**). A few minutes later, at the ramp to the Williamsburg Bridge, § 87(2)(b) approached PO Guarini, who again wore a mourning band covering his shield number (**Allegation L: Abuse of Authority - § 87(2)(g)**). § 87(2)(b) provided cell phone footage that captured the entirety of each interaction (Board Reviews 01, 02, 03, 04, 05, 06, 07, 08, 09, and 10). No BWC footage was obtained. The nature of these incidents did not require the use of BWC as per Patrol Guide Procedure 212-123 (Board Review 26).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Eckerle obstructed his shield number.

Allegation (B) Abuse of Authority: Police Officer Joseph Guarini obstructed his shield number.

During his testimony, § 87(2)(b) presented cell phone footage and confirmed that it accurately captured the entirety of each interaction he had with officers on May 31, 2020 (Board Review 11).

At approximately 3:23pm on 14th Street, near the corner of 14th Street and 6th Avenue in Manhattan, cell phone footage shows PO Eckerle wearing a mourning band over his shield number. Protesters can be heard chanting continuously in the background. § 87(2)(b) asks him what his shield number is, and to adjust his mourning band to show his shield number. PO Eckerle tells § 87(2)(b) his shield number, to which § 87(2)(b) replies, “what?”, at which point PO Eckerle repeats it once again. § 87(2)(b) asks PO Eckerle “are you gonna uncover your badge?” and tells him, “you’re allowed to have the memorial there; you have to keep it above your numbers; the

§ 87(2)(g)

Cell phone footage shows that PO Guarini answered § 87(2)(b)'s request for his name and shield number. § 87(2)(g)

PO Guarini testified that he was aware that officers were required to wear their mourning bands so as not to cover their shield numbers. § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Ryan Bradley refused to provide his shield number to § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Ryan Bradley obstructed his shield number.

Allegation (E) Force: Police Officer Ryan Bradley used physical force against § 87(2)(b)

The one minute and 20 second cell phone footage taken by § 87(2)(b) (Board Review 03) shows § 87(2)(b) approach PO Bradley near the north side of Washington Square Park and ask for his shield number. PO Bradley can be seen wearing a motorcycle helmet, sunglasses, face mask, and a mourning band which completely obscures his shield number. PO Bradley is standing with his hands at his sides, by himself in an open space, just north of the Washington Square Arch. Officers and civilians can be seen walking by several feet away, though no one is seen standing near PO Bradley or § 87(2)(b) for longer than a few seconds. Clapping can be heard, but there is no yelling/chanting, etc. taking place. PO Bradley does not initially reply, and § 87(2)(b) immediately asks for his shield number and command twice and says, "it's illegal to cover your badge like that." PO Bradley still does not reply, and § 87(2)(b) asks, "do you want me to report you to the CCRB?" § 87(2)(b) tells him that he has him "on video refusing to talk to [him]," at which point PO Bradley tells § 87(2)(b) that he is looking out for his own personal safety and says to him, "I will get back to you in a moment." § 87(2)(b) then asks PO Bradley for his number/patrol number three more times and asks him to uncover his badge seven times. PO Bradley does not respond. An officer in a white shirt is heard telling PO Bradley to head to Washington Square East and immediately walks away, and PO Bradley approaches his scooter. At approximately 00:55, § 87(2)(b) continues to ask PO Bradley for his shield number, saying "what's your number?" in rapid succession 17 times. PO Bradley does not reply, tells § 87(2)(b) to back off and that he needs some space. At 1:05 he twice tells § 87(2)(b) "watch out" and at 1:14 twice tells him to get out of the way. § 87(2)(b) remains in roughly the same position relative to PO Bradley's scooter throughout and in very close proximity. While not clearly seen in the footage, § 87(2)(b) testified (Board Review 11) that PO Bradley pushed him, but did not clearly recall how he did so. Due to the closeness of their proximity, the footage does not show what PO Bradley is doing with his hands as he boards his scooter, whether he pushes or makes contact with § 87(2)(b) and § 87(2)(b) makes no verbal statement that he was pushed.

PO Bradley testified that, to his understanding, officers were required to wear their mourning bands in a manner that did not obscure their shield number. PO Bradley stated that, at the time he interacted with § 87(2)(b) he was concerned for his personal safety as he had observed protestors throwing rocks and bottles moments before. He stated that, while § 87(2)(b) asked for his shield number and command, and asked that he adjust his mourning band, his concern for his safety prevented him from providing this information verbally to § 87(2)(b) or adjusting his

mourning band in any way. Shortly thereafter, PO Bradley was instructed to join the rest of his unit at the other side of the park. As he went to mount his scooter, § 87(2)(b) stood directly beside it, preventing him from properly straddling the vehicle in order to operate it. PO Bradley asked § 87(2)(b) repeatedly to move, but he refused. PO Bradley then placed one of his hands on § 87(2)(b)'s chest or shoulder, for a period of less than a second, after which § 87(2)(b) voluntarily stepped back, and PO Bradley rode away on his scooter. PO Bradley further stated that he was not aware that his mourning band was covering his shield number at the time, and did not do so intentionally, but looked at and adjusted it sometime later that day when he felt it was safer to do so (Board Review 14).

Police Officer Stephen O'Leary of the Patrol Borough Manhattan South Scooter Taskforce testified that he worked alongside PO Bradley on May 31, 2020. While they were on foot on the north side of Washington Square Park, § 87(2)(b) approached PO Bradley and asked him for his shield number several times. PO Bradley responded that he would provide that information when it became safe for him to do so. PO O'Leary did not hear PO Bradley provide § 87(2)(b) his shield number at any point and did not independently recall PO Bradley wearing a mourning band in a manner that obscured his shield number. PO O'Leary stated that, at this time, over 100 protesters were nearby (though he did not recall their exact distance) creating an unsafe environment for him and PO Bradley by their sheer number and proximity. A few minutes later a supervisor, whose name PO O'Leary did not recall, approached PO O'Leary and PO Bradley and told them to rejoin the rest of their unit, who were on the south side of Washington Square Park. PO O'Leary and PO Bradley mounted their scooters and drove away. PO O'Leary did not observe any interaction while PO Bradley was getting onto his scooter as he was engaged in mounting his own scooter. PO O'Leary did not observe PO Bradley push § 87(2)(b) or any physical contact between the two throughout this interaction (Board Review 27).

Officers are required to provide their name, rank, shield number, and command, or otherwise provide them to anyone who requests them, NYPD Patrol Guide Section 203-09 (Board Review 23).

Officers may wear mourning bands on their shields, covering the seal of the City, but leaving their shield number visible, NYPD Patrol Guide Section 204-17 (Board Review 24).

An officer may use force when it is reasonable to ensure the safety of an officer or a third person, or otherwise protect life, or to place a person in custody or prevent their escape from custody. The reasonableness of the use of force is based upon the totality of the circumstances known by the officer at the time, NYPD Patrol Guide Section 221-01 (Board Review 25).

PO Bradley argued that the reason that he did not provide his information to § 87(2)(b) or adjust his mourning band was due to safety concerns. He stated that his safety concern stemmed from the fact that protesters had been throwing objects nearby moments before this interaction, though none can be seen doing so in the cell phone footage. PO O'Leary also stated that the officers had a safety concern at the time, but that it stemmed simply from the number ("over 100") and proximity ("close by") of protesters at the time. Civilians in the cell phone footage can be seen walking around and do not linger near PO Bradley or § 87(2)(b) at any point. No chanting or yelling can be heard in the footage's audio, and PO Bradley is not seen interacting with anyone other than § 87(2)(b) § 87(2)(g)

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§ 87(2)(g)

The cell phone footage captured § 87(2)(b) in very close proximity to PO Bradley as he mounted his scooter and PO Bradley repeatedly requested that § 87(2)(b) step back. § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Jonathan Pena obstructed his shield number.

Allegation (G) Abuse of Authority: Police Officer Thomas Foronjy obstructed his shield number.

Allegation (H) Abuse of Authority: Police Officer Stephen Patti obstructed his shield number.

Cell phone footage shows that, at approximately 4:08pm, outside 46 Ridge Street in Manhattan, § 87(2)(b) approached PO Pena, who was wearing a helmet with ear protection, a face shield, and a face mask. He was standing with his back nearly up against a brick wall. No protesters were visible in the video and no chanting was heard; there were audible bells heard in the background. He wore a mourning band covering his shield number. § 87(2)(b) asked for his shield twice, then asked for him to adjust his mourning band, for his shield number two more times, and for his command. PO Pena did not seem to respond, though it is difficult discern due to his face mask. § 87(2)(b) asks PO Pena for his shield number once more, who looks and turns his head to his left and he then provides it verbally, to which § 87(2)(b) replies “alright, fuck you.” Less than a minute later, another cell phone footage clip (1 second long) shows § 87(2)(b) approach PO Foronjy, who appears to be standing near PO Pena as he is also standing with his back to a brick wall. PO Foronjy is wearing a helmet with ear protection and a face shield, but no face mask. He is also wearing a mourning band completely obscuring his shield number. § 87(2)(b) says, “fuck you.” An additional clip that taking place a few minutes after that shows § 87(2)(b) a short distance down the road at roughly the same location. He approaches PO Patti, who is wearing a helmet with ear protection. He is not wearing a mask and his face shield is fully raised and not in front of his face. PO Patti is also wearing a mourning band completely obscuring his shield number. § 87(2)(b) asks for his shield number and command, both of which PO Patti provides. § 87(2)(b) then replies, “fuck you.”

§ 87(2)(b) testified that prior to the brief footage he took of PO Foronjy, he asked him for his shield number and to uncover his badge. PO Foronjy provided his shield number, but § 87(2)(b) did not see him adjust his mourning band at any point (Board Reviews 04, 05, 06, and 11).

PO Pena, PO Foronjy, and PO Patti were consistent in their testimony that they each provided their shield numbers verbally when § 87(2)(b) requested them, that they wore mourning bands on that day in honor of officers that had died from COVID-19, and that they were not aware that their mourning bands covered their shields at any point. All three officers denied receiving any instruction specific to mourning bands on that day or discussing them with any other officer (Board Reviews 15, 16, and 17).

PO Foronjy and PO Patti were consistent in testifying that, to their understanding, mourning bands were meant to be worn on an officer’s shield, covering the seal of New York, and leaving the officer’s shield number visible (Board Reviews 16 and 17).

PO Pena testified that he was not aware of any guidelines or rules concerning the use of mourning bands. He further stated that mourning bands could slip while being worn and cover an officer’s shield number. When PO Pena demonstrated this during his interview however, his

mourning band did not slip so far down his shield so as to cover his number. PO Pena stated that he did not initially hear § 87(2)(b)'s requests for his shield number and command, and that an officer nearby, whose name PO Pena did not recall, told him that § 87(2)(b) was requesting them, at which point he provided that information (Board Review 15).

Officers may wear mourning bands on their shields, covering the seal of the City, but leaving their shield number visible, NYPD Patrol Guide Section 204-17 (Board Review 24).

PO Pena, PO Foronjy, and PO Patti each testified that they were not aware of their mourning bands covering their shields when they interacted with § 87(2)(b) and that they did not discuss mourning bands with any other officers on that day. § 87(2)(g)

§ 87(2)(b) at the time of these interactions, all three officers wore their mourning bands in a manner which covered their shield numbers. All three officers belonged to the same command and were assigned to stationary footposts in close proximity to each other, as well as several other officers, in a line formation along the exterior of the 7th Precinct Stationhouse. § 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Anthony Misiano obstructed his shield number.

Allegation (J) Abuse of Authority: Police Officer Anthony Misiano refused to provide his shield number to § 87(2)(b)

Allegation (K) Abuse of Authority: Police Officer Philip Salomone obstructed his shield number.

Cell phone footage shows § 87(2)(b) approach PO Misiano at approximately 4:11pm, near the intersection of Clinton Street and Williamsburg Bridge in Manhattan. PO Misiano can be seen wearing a protective helmet with ear protection, polarized sunglasses, and a mourning band covering his shield number, and standing with his hands gripping the collar of his shirt with his palms facing towards his body with his thumbs up, so that his arms cover both his shield number, name, and his thumbs covered his command pins. § 87(2)(b) asks PO Misiano for his shield number, then asks him to uncover his shield number, and then asks again for his shield number as well as command, then proceeds to ask him to uncover his shield approximately seven times. PO Misiano does not respond verbally or physically to any of these requests. In the reflection of PO Misiano's sunglasses, § 87(2)(b) can be seen standing with his phone in front of him while recording and does not appear to change position or otherwise move his body while making these requests. Additional footage taken seconds later shows § 87(2)(b) approach PO Salomone, who is standing a few feet away from PO Misiano, also wearing a protective helmet with ear protection, a face mask, as well as a mourning band that is covering his shield number. § 87(2)(b) say to him, "uncover your badge, sir you have to have your badge visible, you're obscuring your numbers intentionally." PO Salomone adjusts his mourning band to expose his shield number. In both videos, protestors can be heard chanting in the background, but do not appear to drown out § 87(2)(b)'s requests. Moreover, while speaking to PO Misiano in the first clip, § 87(2)(b) times his speech so as to ask PO Misiano to adjust his mourning band in between several evenly timed chants which can be heard offscreen, (Board Reviews 07, 08, and 11).

Both PO Misiano and PO Salomone were consistent in testifying that they wore mourning bands on that day in remembrance of officers who had died from COVID-19. Both stated that it

was their understanding that mourning bands were meant to be worn on an officer's shield above their shield number, without obscuring it, and that the bands were made of a material that could potentially slip and change its position during the course of an officer's duties. Both denied receiving any instruction specific to mourning bands on that day or discussing them with any other officers (Board Reviews 18 and 19).

PO Salomone testified that § 87(2)(b) approached him and requested that he adjust his mourning band to show his shield number and name, and he did so. Upon being shown video of his mourning band initially obscuring his shield number, he stated that he was not aware of it before this interaction (Board Review 19).

Officers may wear mourning bands on their shields, covering the seal of the City, but leaving their shield number visible, NYPD Patrol Guide Section 204-17 (Board Review 24).

[REDACTED]

§ 87(2)(g)

It is undisputed that § 87(2)(b) asked PO Salomone to adjust his mourning band, and he did so, revealing his shield number. PO Salomone testified that he was not aware that his mourning band was obscuring his shield number prior to the interaction with § 87(2)(b) § 87(2)(g).

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Joseph Guarini obstructed his shield number.

Cell phone footage provided by § 87(2)(b) shows him approach PO Guarini a second time at approximately 4:15pm, approximately 45 minutes after their first interaction (see Allegation B) near the Manhattan side entrance to the Williamsburg Bridge, and ask him to uncover his shield. PO Guarini's mourning band can be seen obscuring his shield number. Additionally, PO Guarini can be seen wearing an eight-point cap which displays his shield number. PO Guarini does not respond to this, and § 87(2)(b) asks for his commanding officer and shield number. PO Guarini tells § 87(2)(b) that his shield number is on his hat, and § 87(2)(b) asks for it again, at which point PO Guarini verbally provides it and tells § 87(2)(b) "you can read, sir." § 87(2)(b) again asks PO Guarini to uncover his badge, to which PO Guarini replies that "it's fine where it is." § 87(2)(b) responds, "no, it's illegal to have your badge obscured like that." PO Guarini responds that it is not obscured and that his badge is visible. § 87(2)(b) then tells PO Guarini that he will be reporting him to the CCRB if he does not uncover his badge within five seconds, to which PO Guarini replies by quickly counting down from five (Board Reviews 10 and 11).

PO Guarini testified, upon being shown this video, that he was not aware that his mourning band was obscuring his shield number at the time, and in fact believed that it was not. He stated that it was tactically unsound for him to look down at it at the time, as several hundred protesters were approaching the Williamsburg Bridge. He further stated that, shortly after this interaction, when he felt it was safe to do so, he looked at his mourning band, saw that it was covering his shield number, and adjusted it, immediately after which it slipped back down and again covered his shield number (Board Review 13).

Officers may wear mourning bands on their shields, covering the seal of the City, but leaving their shield number visible, NYPD Patrol Guide Section 204-17 (Board Review 24).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- PO Eckerle has been a member of service for two years and has been a subject in one CCRB prior complaint and one allegation, neither of which was substantiated. § 87(2)(g)
- PO Guarini has been a member of service for two years and has been a subject in one CCRB complaint and two allegations, none of which have been substantiated. § 87(2)(g)
- PO Bradley has been a member-of-service for eight years and this is the first CCRB complaint to which he has been a subject. § 87(2)(g)
- PO Pena has been a member-of-service for one year and has been a subject in one CCRB complaint and one allegation which was not substantiated. § 87(2)(g)
- PO Foronjy has been a member-of-service for three years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Patti has been a member-of-service for five years and has been a subject in eight CCRB complaints and 18 allegations, none of which have been substantiated. § 87(2)(g)
- PO Misiano has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject. § 87(2)(g)
- PO Salomone has been a member-of-service for two years and has been a subject in two CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)

- This complaint was unsuitable for mediation.
- As of September 9, 2020, the New York City Officer of the Comptroller has no record of a Notice of Claim being filed with regard to this complaint (Board Review 21).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 22).

Investigator: Inv. Saavedra 10/29/20
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____